

CONSTRUCTED WATER CONVEYANCES REFORM ACT OF
1995

DECEMBER 21, 1995.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. SHUSTER, from the Committee on Transportation and
Infrastructure, submitted the following

REPORT

[To accompany H.R. 2567]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom
was referred the bill (H.R. 2567) to amend the Federal Water Pol-
lution Control Act relating to standards for constructed water con-
veyances, having considered the same, report favorably thereon
with an amendment and recommend that the bill as amended do
pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof
the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Constructed Water Conveyances Reform Act of
1995”.

SEC. 2. CONSTRUCTED WATER CONVEYANCES.

Section 303(c)(2) of the Federal Water Pollution Control Act (33 U.S.C. 1313(c)(2))
is amended by adding at the end the following:

“(C) STANDARDS FOR CONSTRUCTED WATER CONVEYANCES.—

“(i) RELEVANT FACTORS.—If a State exercises jurisdiction over con-
structed water conveyances in establishing standards under this sec-
tion, the State shall consider any water quality impacts resulting from
any return flow from a constructed water conveyance to navigable wa-
ters and the need to protect downstream uses and may consider the fol-
lowing:

“(I) The existing and planned uses of water transported in a con-
veyance system.

“(II) Management practices necessary to maintain the convey-
ance system.

“(III) Any State or regional water resources management and
water conservation plans.

“(IV) The intended purposes for the constructed conveyance.

“(ii) RELEVANT USES.—If a State adopts or reviews water quality standards for constructed water conveyances, it shall not be required to establish recreational, aquatic life, or fish consumption uses for such systems if the uses are not existing or reasonably foreseeable or the uses interfere with the intended purposes of the conveyance system.

“(iii) STATUTORY CONSTRUCTION.—Nothing in this subparagraph shall be construed to require a State to exercise jurisdiction over constructed water conveyances in establishing standards or to prohibit a State from considering any relevant factor in establishing standards or from establishing any relevant use.

“(iv) CONSTRUCTED WATER CONVEYANCES DEFINED.—In this subparagraph, the term ‘constructed water conveyance’ means a manmade water transport system constructed for the purpose of transporting water for agricultural purposes or municipal and industrial water supply purposes in a waterway that is not and never was a natural waterway.”.

PURPOSE AND SUMMARY

The purpose of H.R. 2567, the “Constructed Water Conveyances Reform Act of 1995,” is to provide States increased flexibility to set Water quality standards for constructed water conveyances under the Federal Water Pollution Control Act (also known as the Clean Water Act or the Act) to better reflect the different characteristics and uses of such water conveyances compared to other waters regulated under the CWA (such as lakes and streams). The bill is essentially the same as provisions in H.R. 961, the “Clean Water Amendments of 1995,” which passed the House on May 16, 1995.

NEED FOR LEGISLATION

The Clean Water Act requires states to establish water quality standards for “navigable waters,” more specifically defined as “waters of the United States, including the territorial seas,” in section 502(7) of the existing Act. Consistent with congressional intent, courts and agencies have interpreted the term broadly; in some instances, this has included a wide array of natural and constructed waterbodies and waters. Once geographic jurisdiction under the Clean Water Act is established for a particular waterbody or waters, the State is required to establish water quality standards that, based upon various criteria, will protect and maintain the designated uses for the water body or waters. Designated uses may include, for example, fishing, swimming, and agricultural and municipal and industrial water supply.

Over the years, various concerns have arisen regarding the regulation of certain constructed water conveyance systems typically found in arid, western states. Certain conveyance systems, constructed to transport water for agricultural purposes and municipal and industrial water supply purposes, have determined to be “navigable waters” under the Act and subject to water quality standards including, in some instances, standards that are based on designated uses for recreation, aquatic life, and fish consumption. This can result in costly and sometimes unnecessary requirements that do not adequately take into account the physical characteristics or uses of the conveyances.

Based on testimony and other data gathered by the Water Resources and Environment Subcommittee, the Committee included language in H.R. 961, the “Clean Water Amendments of 1995,” to

provide increased flexibility to States to set water quality standards for constructed water conveyance based on certain relevant factors and uses.

This bill, like the comparable provisions in H.R. 961, has broad support, particularly from western, arid area States and Agricultural interests. Rice and other agricultural commodity groups strongly support the bill, because it gives States water officials added flexibility to address the unique features of agricultural water conveyances. Western municipal interests support the bill because it allows State water officials to recognize the special features and purposes of structures that transport public water supplies.

DISCUSSION OF COMMITTEE BILL AND SECTION-BY-SECTION ANALYSIS

Section 1 designates the short title of the bill as the "Constructed Water Conveyances Reform Act of 1995."

Section 2 adds a new subparagraph (C), regarding water quality standards for constructed water conveyances, to paragraph 303(c)(2) of the Clean Water Act. New clause (i), entitled "Relevant Factor," provides that if a State exercises jurisdiction over constructed water conveyances, then is establishing standards under this section of the Act the State must consider the water quality impacts from any return flows and the need to protect downstream uses and may consider four additional factors: (1) the existing and planned uses of the transported water; (2) management practices necessary to maintain the conveyances; (3) any State or regional water resources management and water conservation plans that may exist, and (4) the intended purposes for the constructed conveyance.

New clause (ii), entitled "Relevant Uses," provides that if a State adopts or reviews water quality standards for constructed water conveyances, the State is not required to establish recreational, aquatic life, or fish consumption uses for such systems if the uses are not existing or reasonably foreseeable or such uses interfere with the intended purposes of the conveyance system. The term "interfere with" means more than a de minimis interference. The Committee's amendment in the nature of a substitute replaced the term "impede" with the term "interfere with" because of a concern that the term in the introduced bill did not establish a clear or sufficient threshold. The Committee's intent is that there should be an appreciable interference that diminishes the ability to accomplish the intended purposes. A minor interference or impediment (such as incurring insignificant costs of inconveniences) would not exceed the threshold. Generally speaking interference caused by reasonable, affordable measures to accommodate multiple uses (e.g., water transport for agricultural or municipal and industrial purposes, and recreational, aquatic life or fish consumption) would not be expected to exceed the threshold.

If a State does not establish recreational, aquatic life, or fish consumption uses for a constructed water conveyance, then the State should identify and, as appropriate, take reasonable measures to ensure that the conveyance is not used for those purposes. For example, a State should not designate areas at a constructed convey-

ance for fishing while refusing to designate the conveyance for fish consumption uses.

New clause (iii), entitled "Statutory Construction," provides that nothing in the bill shall be construed to require a State to exercise jurisdiction over constructed water conveyances in establishing standards, nor shall it be construed to prohibit a State from considering any relevant factor in establishing standards or from establishing any relevant use.

New clause (iv), entitled "Constructed Water Conveyance Defined," defines the term to mean a manmade water transport system constructed for the purpose of transporting water for agricultural purposes or for municipal and industrial water supply purposes in a waterway that is not and never was a natural waterway. The Committee intends this term to apply only to conveyances that have been maintained as constructed water conveyances for the purposes of transporting water for agricultural purposes or municipal and industrial water supply purposes. The Committee does not intend the term to include the alteration of a natural stream for purposes of changing its course or to include constructed wetlands.

HEARINGS AND PREVIOUS LEGISLATIVE ACTIVITY

During February and March of 1995, the Subcommittee on Water Resources and Environment held seven hearings on the subject of reauthorizing the Clean Water Act. The Subcommittee received testimony and other data regarding the desire to grant States greater flexibility to recognize the different characteristics and uses of constructed water conveyances. Section 305 of H.R. 961 contained a provision addressing this subject.

Subsequent to passage of H.R. 961, Representatives Gary Condit and Robert Matsui introduced H.R. 2567. With the exception of two changes, the introduced version of H.R. 2567 is identical to the relevant provisions in H.R. 961. One change regards the extent to which States can or should consider relevant factors; the other deletes from the definition of "constructed water conveyance" a reference to perennial waterways.

COMMITTEE CONSIDERATION

In order to expedite consideration of H.R. 2567, the Subcommittee on Water Resources and Environment was discharged from consideration of the bill. Chairman Shuster offered and the Committee approved, by voice vote, an amendment in the nature of a substitute. The amendment made several changes, minor modifications, and clarifications to the introduced bill. The Committee approved the amendment and ordered the bill reported by voice vote. The Committee, in compliance with rule XI, clause 2(l) of the Rules of the House of Representatives, reports favorably the bill, H.R. 2567, as amended.

COMMITTEE OVERSIGHT FINDINGS

Clause 2(l)(3)(A) of rule XI requires each committee report to contain oversight findings and recommendations required pursuant to clause 2(b)(1) of rule X. The Committee has no specific oversight findings.

OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE
ON GOVERNMENT REFORM AND OVERSIGHT

Clause 2(l)(3)(D) of rule XI requires each committee report to contain a summary of the oversight findings and recommendations made by the Government reform and Oversight Committee pursuant to clause 4(c)(2) of rule X, whenever such findings have been timely submitted. The Committee on Transportation and Infrastructure has received no findings and recommendations from the Committee on Government Reform and Oversight.

COMMITTEE COST ESTIMATE

Clause 2(l)(3)(B) of rule XI requires each committee report that accompanies a measure providing new budget authority, new spending authority, or new credit authority or changing revenues or tax expenditures to contain a cost estimate, as required by section 308(a)(1) of the Congressional Budget Act of 1974 and, when practicable with respect to estimates of new budget authority, a comparison of the total estimated funding levels for the relevant program (or programs) to the appropriate levels under current law.

Clause 7(a) of rule XII requires committees to include their own cost estimates in certain committee reports, which include, where practicable, a comparison of the total estimated funding level for the relevant program (or programs) with the appropriate levels under current law.

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office, pursuant to section 403 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Clause 2(l)(3)(C) of rule XI requires each committee report to include a cost estimate prepared by the Director of the Congressional Budget Office, pursuant to section 403 of the Congressional Budget Act of 1974, if the cost estimate is timely submitted. The following is the Congressional Budget Office cost estimate:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC December 20, 1995.

Hon. BUD SHUSTER,
*Chairman, Committee on Transportation and Infrastructure,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 2567, the Constructed Water Conveyances Reform Act of 1995, as ordered reported by the House Committee on Transportation and Infrastructure on December 14, 1995. CBO estimates that enactment of this bill would not result in any significant cost to the federal government. H.R. 267 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

FEDERAL COSTS

The bill would amend the Clean Water Act to provide relevant factors for consideration by states that choose to set water quality standards for man-made water transport systems under the act. Specifically, the bill would allow states to consider unique features and special purposes of agricultural and public water supply systems that distinguish them from natural water systems when setting water quality standards. Those changes would not have a significant impact on the workload of the Environmental Protection Agency; hence, we estimate that the bill would have little or no impact on the federal budget.

STATE AND LOCAL COSTS

H.R. 2567 would give states greater flexibility when establishing water quality standards for constructed water conveyances such as canals and irrigation ditches. The use of this flexibility would likely result in future savings for arid, Western states (primarily Arizona and California) and for some irrigation districts and municipal water systems within their borders. Because this bill would affect regulations that are still being promulgated, CBO cannot estimate the magnitude of these future savings.

The Clean Water Act requires states to establish water quality standards for individuals bodies of water that include a set of designated uses (such as recreation, water supply, or fishing). The designated uses influence the maximum pollution levels set for each body of water. The bill would allow states to refrain, in some circumstances, from considering recreational, aquatic life, or fish consumption uses when establishing standards for constructed conveyances. Current law provides less flexibility to states. Use of this flexibility would result in less stringent standards and thus lower compliance costs for local government that own conveyances. It would also result in lower administrative costs for states.

Currently, no local governments with constructed conveyances are subject to standards that incorporate these uses. However, several states are in the process of establishing standards that would begin to take effect as early as October 1996.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Kim Cawley and for state and local costs, Pepper Santalucia.

Sincerely,

JUNE E. O'NEILL, *Director*.

INFLATIONARY IMPACT STATEMENT

Clause 2(l)(4) of rule XI requires each committee report on a bill or joint resolution of a public character to include an analytical statement describing what impact enactment of the measure would have on prices and costs in the operation of the national economy. The Committee has determined that H.R. 2567 has no inflationary impact on the national economy.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**SECTION 303 OF THE FEDERAL WATER POLLUTION
CONTROL ACT**

WATER QUALITY STANDARDS AND IMPLEMENTATION PLANS

SEC. 303. (a) * * *

* * * * *

(c)(1) * * *

(2)(A) * * *

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(C) STANDARDS FOR CONSTRUCTED WATER CONVEYANCES.—

(i) *RELEVANT FACTORS.*—If a State exercises jurisdiction over constructed water conveyances in establishing standards under this section, the State shall consider any water quality impacts resulting from any return flow from a constructed water conveyance to navigable waters and the need to protect downstream uses and may consider the following:

(I) The existing and planned uses of water transported in a conveyance system.

(II) Management practices necessary to maintain the conveyance system.

(III) Any State or regional water resources management and water conservation plans.

(IV) The intended purposes for the constructed conveyance.

(ii) *RELEVANT USES.*—If a State adopts or reviews water quality standards for constructed water conveyances, it shall not be required to establish recreational, aquatic life, or fish consumption uses for such systems if the uses are not existing or reasonably foreseeable or the uses interfere with the intended purposes of the conveyance system.

(iii) *STATUTORY CONSTRUCTION.*—Nothing in this subparagraph shall be construed to require a State to exercise jurisdiction over constructed water conveyances in establishing standards or to prohibit a State from considering any relevant factor in establishing standards or from establishing any relevant use.

(iv) *CONSTRUCTED WATER CONVEYANCES DEFINED.*—In this subparagraph, the term “constructed water conveyance” means a manmade water transport system constructed for the purpose of transporting water for agricultural purposes or municipal and industrial water supply

purposes in a waterway that is not and never was a natural waterway.

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